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ORIGINAL

FILED
February 22 2010
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

FILED

FEB 22 2010

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

L.M.

2929 MABELLE LANE

MISSOULA MT 59803

(406) 880-7749

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

****

STATE OF MONTANA	)	DEPT NO. 2
	)	
PLAINTIFF,	)	CAUSE NO. DC.-08-445
VS.	)	
	)	EMERGENCY MOTION and AFFIDAVIT in Support
L.M	)	
DEFENDANT.	)	TO RECONSIDER DISQUALIFICATION

****

I, L.M. , The Defendant in the above named criminal case, in good faith and with good cause showing, do hereby Motion the Supreme Court to Reconsider my Motion for Disqualification of Judge Deschamps. This Motion is pursuant to and supported by: Exhibit A & all evidence listed in the table of contents as Exhibits:

1.) **Mont. Code Ann. § 46-1-103. Scope -- purpose -- construction:** (1) This title governs the practice and procedure in all criminal proceedings in the courts of Montana... (3) Any irregularity in a proceeding specified by this title that does not affect the substantial rights of the accused must be disregarded.

2.) **Title 18 § Section 241: Conspiracy Against Rights**

3.) **Title 18 § Section 242: Deprivation of Rights Under Color of Law**

GENERAL ARGUMENTS:

My Motion for Disqualification was timely, there was no recognized hearing scheduled, the Disqualification is mandatory for many mandated reasons and Until the Issue of Judge Deschamps Disqualification is settled by the Supreme Court, All actions in this case must cease, the Orders on February 8, 2010 must be vacated as all Orders by Judge Deschamps are by law, abuses of discretion, as his disqualification is mandatory.

I. FACTUAL ARGUMENT FOR RECONSIDERATION:

1.) On February 4, 2010 I received notice from the Missoula Clerk of Court that the Supreme Court had denied my Motion for Disqualification of Judge Deschamps citing a February 16, 2010 hearing. Plaintiff Motions for reconsideration of the Disqualification as I filed my Motion on January 22, 2010. The date of the trial was scheduled for March 1, 2010. There was 38 days until the trial date.

2.) I offer the following information and Supporting Evidence to show that no individual or professional involved in this criminal case including myself, Chris Daly Public Defender, Ms. Boylan Deputy County Attorney, Judge Deschamps himself {nor my supporters Pam Walter and Caryl Wickes-Connick (who come to every hearing, take notes and participate in every communication with my Public Defender} did in any way recognize or remember the pre trial hearing scheduled for February 16, 2010.

3.) I assert that the Denial is in error specifically because all involved parties including S. Boylan, myself, Chris Daly and Judge Deschamps himself know without any doubt that Judge Deschamps had repeatedly denied each and every one of my repeated Motions for a pretrial hearing {as well as denying the States repeated agreements to my repeated Motions for a pretrial hearing} ... Motions I made (sometimes more than once) during five of the previous six hearings.

4. I also assert that Judge Deschamps is knowingly engaging in highly prejudicial behavior and rulings which have denied me due process, while he pushes forward towards trial, in order to avoid his mandatory Disqualification. These rulings including:

a.) denying Motions by both the County Attorneys Office and myself to postpone the trial as neither of us are prepared for the trial.

b.) by flatly denying my use at trial of any and all law enforcement records, CFS records, Court records, billing, any and all audio recordings or transcriptions at trial (& overtly -knowingly misapplying MCA 403(b) in order to ban all direct evidence he holds- which irrefutably proves that the Guardian Ad Litem lied to all of these professionals

(evidence I submitted to Judge Deschamps in my Motion for Dismissal) in Order to prove to the jury that my arrest warrant and the criminal prosecution itself are based on lies Ann's to the court, to CFS, to the county Attorneys Office and to my psychological evaluator.

c.) Repeatedly denied me state payment for Court transcriptions and evaluations necessary for my defense.

See: IN THE SUPREME COURT OF THE STATE OF MONTANA; 1998 MT; STATE OF MONTANA MONTANA v. PATRICK LANCIONE: "¶20 The standard of review for evidentiary rulings is whether the district court abused its discretion. See State v. Gollehon (1993), 262 Mont. 293, 301, 864 P.2d 1257, 1263. The determination of whether evidence is relevant and admissible is left to the sound discretion of the trial judge and will not be overturned absent a showing of abuse of discretion. See Gollehon, 262 Mont. at 301, 864 P.2d at 1263." "From the record, we must determine whether there is a reasonable possibility that the inadmissible evidence might have contributed to a conviction. State v. Bower (1992), 254 Mont. 1, 6, 833 P.2d 1106, 1109. In Bower, we noted that when assessing the potentially prejudicial effect of an error, we examine the totality of the circumstances in which the error occurred. If the issue involves inadmissible evidence, we will not evaluate the evidence in isolation because that would risk magnifying the error beyond the impact it had on the verdict. Bower, 254 Mont. at 6, 833 P.2d at 1109."

SEE: No. 03-509; IN THE SUPREME COURT OF THE STATE OF MONTANA; 2005 MT; STATE OF MONTANA; V. CHERYL IRISH CLIFFORD; APPEAL FROM: The District Court of the First Judicial District: " By excluding that evidence, Cheryl contends the District Court violated Rule 404(b), M.R.Evid., her right to present a defense under due process, and the right to confront witnesses against her under the Sixth Amendment to the United States Constitution."

" *A. Reverse 404(b) Evidence* ¶44 Cheryl sought to admit Daniel's prior sexual history and psychological profile to show that he, and not Cheryl, wrote the letters. On occasion, a defendant will use Rule 404(b), M.R.Evid., to

introduce evidence to inculpate another person, thus exculpating himself. Courts call evidence introduced for this purpose "reverse 404(b) evidence." *United States v. Stevens* (3d Cir. 1991), 935 F.2d 1380, 1401-02. Since the defendant is offering the reverse 404(b) evidence, courts applying the Rule 403, M.R.Evid., balancing test cannot consider the risk of unfair prejudice to the defendant. *Stevens*, 935 F.2d at 1404-05 ("[T]he admissibility of 'reverse 404(b)' evidence depends on a straightforward balancing of the evidence's probative value against considerations such as undue waste of time and confusion of the issues.").

"¶45 Although the State raises the specter of prejudice to the government, it fails to develop that theory. Unfair prejudice against the government is rather rare. "'Unfair prejudice' within its context means an undue tendency to suggest decision on an improper basis, commonly, though not 15 necessarily, an emotional one." Fed. R. Evid. 403 advisory committee's note; *see Southern*, ¶ 67. Thus, the only possible unfair prejudice against the government occurs when the evidence tends to make the jury more likely to find a defendant not guilty *despite* the proof beyond a reasonable doubt. *See, e.g., Old Chief v. United States* (1997), 519 U.S. 172, 185 n.8, 117 S.Ct. 644, 652 n.8, 136 L.Ed.2d 574, 591 n.8. By proving that someone else committed the crime, reverse 404(b) evidence is not likely to generate that risk of jury infidelity, and thus does not generate unfair prejudice. Only in the rarest circumstances will the district court be presented with unfair prejudice to the State in determining the admissibility of reverse 404(b) evidence. Those circumstances are not present here."

"B. The Modified Just *Rule:* ¶46 The District Court excluded six categories of evidence that pointed toward Daniel. Cheryl argues that this evidence of misidentification was admissible as reverse 404(b) evidence tending to show that Daniel, and not Cheryl, wrote the letters. The District Court granted the State's motion in limine to exclude evidence of Daniel's other crimes, wrongs, or acts. Under Rule 404(b), M.R.Evid., the District Court decided the modified *Just* rule, articulated in *State v. Matt* (1991), 249 Mont. 136, 814 P.2d 52, allowed it to exclude evidence of Daniel's specific acts. ¶47 Rule 404(b), M.R.Evid., provides that Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be

admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. To be admissible under Rule 404(b), the modified *Just* rule requires that the other crimes, wrongs, or acts (1) must be similar and (2) not remote in time. *Matt*, 249 Mont. at 142, 814 P.2d at 56. Such evidence (3) 16 is not admissible to prove the character of a person in order to show that he acted in conformity with such character; but may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *Matt*, 249 Mont. at 142, 814 P.2d at 56. Finally, (4) although relevant, a court may exclude evidence if the danger of unfair prejudice, confusion of the issues, misleading of the jury, considerations of undue delay, waste of time, or needless presentation of cumulative evidence substantially outweighs its probative value. *Matt*, 249 Mont. at 142, 814 P.2d at 56."

"¶58 In her argument, Cheryl fails to recognize that *State v. Worrall*, 1999 MT 55, ¶¶ 29- 34, 293 Mont. 439, ¶¶ 29-34, 976 P.2d 968, ¶¶ 29-34, requires her to prove by a preponderance of the evidence that the statements in the affidavit were false. *Franks*, 438 U.S. at 164-65, 98 S.Ct. at 2681, 57 L.Ed.2d at 677-78; *Worrall*, ¶¶ 32-35. "

Judge Deschamps is misapplying evidentiary law through prejudicial rulings which intentionally exclude direct, relevant and irrefutable evidence, denying me the right to present a defense & confront witnesses Under the Sixth Amendment, through a misapplied 403(b) is excluding relevant evidence, admissible under 404(b) which does irrefutably prove that the Guardian Ad Litem, OE and Nicole roth were was knowingly, intentionally and maliciously lying about me and fabricating evidence which they gave to the court, to CFS and to the law enforcement officers in order to falsely obtain my arrest and remove the children from my care.- while knowingly placing the children in harms way. Judge Deschamps referred to the direct evidence in the hearing on 2/16/2010 telling me to "forget about the Guardian Ad Litem" stated that the evidence proving her illegal actions was "irrelevant." and his belief that the children's disclosures that their father "was touching the children's Vaginas was irrelevant". -though they are the very reason I refused to return the children.

II. FACTUAL CHRONOLOGY and OVERVIEW:

1.) On October 6, 2009 , in open Court, Judge Deschamps repeatedly insulted me, and repeatedly referred to what "everyone" outside the courtroom had told him about me and about the case itself. The court set a pretrial hearing for February 16, 2010, and set the trial date for March 1, 2010. The court ordered that I should have all evidence and witnesses to the State by November 3, 2009. The court ignored statements by my Public Defender that I was highly competent and was actively participating in my own defense.

2.) On November 3, 2009 Chris Daly Motioned the Court on my behalf to allow me to represent myself with him as stand by counsel. Judge Deschamps gestured in exaggerated manners, rolled his eyes at the State's representatives, covered his face, leaned way back in his chair, openly laughed at me with all members of the prosecution's table, while verbally denying the Motion, repeatedly personally insulted me, repeatedly stated his firm opinion that I was "incompetent " negatively commented on his belief in my mental health issues - refused to allow me to speak, refused to hear testimony from myself or anyone in the court {at the request of my Public Attorney}, refused to explain why he allowed another Defendant- a child sexual offender to represent himself with Mr. Daly as stand by counsel, while refusing to allow me to represent myself. Judge Deschamps then refused two of my Verbal Motions to recuse himself , as well as My Verbal Motion for Dismissal while referring to his knowledge that I had previously filed a writ of supervisory control about Judge Larson by telling me that "I could file a Writ of supervisory control or whatever I wanted to do but my Motions were denied"

a.) My first Motion for recusal cited the fact that many individuals, and professionals on the prosecution in the criminal case- and most of the opposing parties in the civil case had contributed to his campaign.

b.) My second Motion for recusal cited {my flawed understanding} that the Court's son (I now understand it was another family member) had been physically abusing his wife and child but the GAL in that case would not make the mandated reports regarding the known domestic abuse to the Court or to CFS because of the abusers familial relationship to Judge Deschamps. I respectfully apologized to Judge Dechamps for having to bring it up at all, told

him I was terrified to do so but felt I must and explained to the Court that my prosecution was based on absolute lies the GAL in my case told the civil Court, law enforcement and CFS, lies which I had direct evidence proving but evidence no one, {including my Public Defender Chris Daly, my former civil & criminal attorneys and my psychological evaluator} would submit to either Court because of the GAL's relationship and protection by the Judge in the civil case (Judge Larson.) Judge Deschamps denied that either of his son's had abused his wife or child., denied both Motion's for recusal and independently Ordered that I would have until November 8 to submit the evidence to the State, and that he would accept filed Pleadings on the issues from both myself and the State.

3.) At the November 24, 2009 hearing Judge Deschamps repeatedly laughed at me, insulted me and threatened me without cause to physically have me tied up, bound and gagged while repeatedly refusing every one of my requests to speak until the very end of the hearing at which point he refused to accept the Motion for a Dismissal he had previously said he would accept, refused to accept my letter documenting that I had fired Chris Daly. Judge Deschamps then told me that "he did not believe me" when I told him that Chris Daly told me to fire him after the last hearing when he had agreed with my former civil attorney Monte Jewell {who had told me that the reason he refused to put forth any of the evidence proving Ann had knowingly lied to the court, to CFS and to the professionals was because by doing so he would "sabotage every case he had in front of Judge Larson for the next 5 years."

4.) I missed the December 2, 2009 hearing by arriving after the hearing had ended (that day the hearing started and ended over 2 hours earlier than it had ever happened before.) Judge Deschamps personally approved my travel to Washington State for the competency evaluation- (which my Public Defender had Motioned for at the hearing that day I had missed.)

5.) On December 8, 2009 hearing Judge Deschamps opened the hearing by laughing at me while Stating in open court that he would not allow me to use a "witch doctor" to assess my competency, then he went on to repeatedly insult me. Chris Daly refused to request the court to Strike the statement from the record. The court refused my Motions for a hearing which S. Boylan agreed was necessary.

6.) During the January 5, 2010 Hearing I Motioned for and repeatedly requested a hearing before the March 1, 2010 hearing, which, the State again- verbally agreed was necessary and the court repeatedly Denied.

7.) At the January 11, 2010 competency hearing, immediately after the Court granted my Motion to represent myself, I twice Motioned for, and explained my belief that a hearing was absolutely necessary before the March 1, 2010 trial date. The Court denied both of my Verbal Motions for a hearing before the March 1, 2010 trial. After which the Court also denied the State's agreement that a hearing was necessary before the March 1, 2010 trial. At this hearing Judge Deshamps refused my Motion for the state to pay for a new psychological evaluation because :

(1.) Dr. Silverman conducted his evaluation while knowing it was illegal for him to do so because he wrote the state laws outlining his actions as such. Because (1) Dr. Silverman admitted he personally has no education training or professional understanding of sexual abuse, child abuse, domestic abuse or drug and alcohol addictions (2) because Dr. Silverman has many (illegal-) "multiple relationships."

(2) Dr. Silverman refused to speak to 50 collateral contacts (including my previous PHD therapist) which my attorney and myself had requested he speak to on my behalf. For the evaluation, and instead based the evaluation and my diagnosis on the information he received from my ex husband - whom he illegally met with for my evaluation and the GAL (in their 106 communications) when he had only spoken to me approximately 15 times.

(3.) Dr. Silverman cited information he knew was false information he received from both my ex husband and the GAL in his evaluation while refusing to report anything I told him or his personal knowledge and direct evidence of Ann O'Connell's known lies to the court, to CFS and had lied repeatedly to the investigating law enforcement officers in Order to stop the investigation.

(4.) Because my previous PHD psychologist, the Public Defenders PHD psychologist and my previous social worker counselor all disagreed with the diagnosis and stated that they do not believe I have Borderline Personality Disorder.

(5.) Because I had not one of the numerous **mandatory historical behaviors** necessary for the diagnosis.

(6.) Because a few weeks before the GAL entered the civil case and began telling all involved professionals that she believed I need a psychological evaluation, the Court Ordered custodial PHD psychologist had recommended (in the 3rd custodial evaluation) that I did not need a psychological evaluation, that my ex husband get the children significantly less than he had and that I essentially remain the "custodial parent."

(7.) Because the false diagnosis inherently means "unreasonable" - and my defense in the criminal case itself was based on the fact that my actions were not only reasonable but necessary and legally protected as I was protecting the children from sexual abuse- & from the GAL herself..

(8.) Because I am unemployed, have been unemployed for almost a year, because I have had an affidavit of inability to pay on file in the civil case for almost 3 years, the civil court refers to me as "indigent" though the civil court refuses to honor my affidavit of inability to pay, has ordered a two plus years separation between the children and I because I cannot pay for the illegally conducted evaluation.

(9.) Because I have no way to pay for the new evaluation which is necessary for my defense in the criminal trial. Judge Deschamps refused my Motion for the state to pay for an evaluation for my criminal case. Judge Deschamps denied my Motion for the State to pay for my necessary "attorney work product" of an evaluation for the criminal hearing stating that "No one had made my mental health an issue in the criminal case."

* * *

I then formally motioned for transcriptions of every criminal Hearing to be provided to me without cost. Judge Deschamps looked directly at his transcription-ist and they exchanged exasperated looks of "oh no!!!" between the two of them. Judge Deschamps asked me what I needed the transcriptions for. I explained to him, that I needed them in the criminal case itself for my defense that not only did the GAL Ann O'Connell knowingly create prejudice against me in the civil case by knowingly maliciously lying about me (I gave Judge Deschamps many examples of these lies) but that prejudice had followed me to the criminal case and resulted directly in the criminal case itself.

I told the judge that the transcriptions contained repeated direct references to Ann's lies from both S. Boylan and

himself - openly prejudicial statements and rulings which were made in every court hearing (including their repeating Ann's false statements in court and in pleadings that I was a witch, that I was "crazy", that I was refusing to get and evaluation...) Judge Deschamps interrupted me mid- sentence denied my formal verbal Motions for transcriptions and immediately (falsely) stating "THAT'S ONE" (of the 3 strikes against me as if I was argumentative... which I was not, I had stopped speaking as soon as he interrupted me. I said nothing, but my jaw dropped in visible shock (which the judge and everyone else pretended he had not just intentionally created a false strike against me.) I looked to my left directly at Chris Daly who was staring straight ahead at the judge who was by now explaining to me that my only recourse was to "File a Writ of Supervisory Control" which he also explained to me and the rest of the Court that he fully expected the Supreme Court to deny - telling me that they would only direct me to file an appeal after the hearing. I looked at Chris in shock and said something quietly to him like, "I didn't do anything- what was that for?" To which Chris replied (while still staring wide eyed at the Judge as if he had not witnessed this) that "He was the judge and he got to decide)

I waited for Judge Deschamps to finish directing me to file the "assuredly denied" Writ, then I formally verbally Motioned for him to at least release the transcription from that very hearing without cost so I could provide it to the Supreme Court in my Writ of supervisory control he was directing me to file that he was knowingly and purposefully denying me (in highly prejudicial rulings and further abuses of discretions) "mandated financial access" to the direct evidence and proof I needed for the Supreme Court documenting that days Prejudicial rulings, statements and actions,- as well, that he had purposefully denied me mandated financial access to evidence which was wholly necessary to my defense in the criminal trial. Judge Deshamps denied my Motion for the transcriptions then made a statement about my being "out of control and hysterical" during that hearing itself I again looked at Chris and at S. Boylan, both of whom stared silently at the Judge.

After the judge made this completely false statement obviously made with the sole intention of creating a false record in that days hearing I told him that I had never once been "out of control or hysterical" during the hearing

whatsoever but had been completely calm at all times. Judge Deschamps then made another independent statement that "He believed that I suffered from extreme Emotional Issues" (Please note 2 minutes earlier he had denied my motion for the state to pay for an educated objective and dis-interested PHD psychological Evaluation- because "No one had made my mental health an issue in the criminal Case."

8.) On January 22, 2010 I filed my Motion for Disqualification.

9.) On January 27, 2010 Chris Daly called me and informed me that the day before (January 26, 2010) at another hearing Judge Deschamps personally approached Chris and informed him that I had filed a Motion for Disqualification. Chris told me that Judge Deschmaps told Chris that the March 1, 2010 trial was indefinitely cancelled due to the Disqualification. Proceedings.

10.) On February 5, 2010 I had another phone conversation with Chris Daly, Pam Walter and Caryl Wickes-Connick where we discussed the Supreme Court's Denial my Motion for Disqualification. Chris Daly told me that he had no personal knowledge or recollection at all of any pre trial hearing and that he did not believe the Judge thought there was a hearing either because Chris remembered Judge Deshamps firmly denied my two Motions for a pre trial hearing (as well as denying the states agreement that a hearing was necessary) before the March 1 trial- at the last hearing. Chris reminded me that Judge Deshamps had personally informed Chris on January 26, that the March 1, 2010 was cancelled indefinitely. Chris informed us that the Judge had not only cancelled my trial date indefinitely, but had scheduled another trial in place of mine on March 1, 2010 for an incarcerated Defendant.

11.) On February 10, 2010 Chris Daly, Pam Walter and I had another telephone conversation where Chris informed us of the information he had received the day before (Feb 9, 2010) from Jason Marx of the County Attorneys Office who informed Chris that after the Denial for Disqualification the Judge had rescheduled "Anders" the incarcerated Defendant- back to his original March 10, 2010 trial date and had rescheduled my trial back to March 1, 2010.

III. LEGAL FOUNDATION FOR DISQUALIFICATION & RECONSIDERATION}:

1.) Mont. Code Ann. § 3-1-803. Disqualification of judges -- all courts: COMMENT: [1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification." **[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.**

2.) **In the SUPREME COURT OF THE UNITED STATES; CAPERTON ET AL. *v.* A. T. MASSEY COAL CO., INC., ET AL. ; CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA; No. 08–22. Decided June 8, 2009:** "It is true that extreme cases often test the bounds of established legal principles, and sometimes no administrable standard may be available to address the perceived wrong. But it is also true that extreme cases are more likely to cross constitutional limits, requiring this Court's intervention and formulation of objective standards. This is particularly true when due process is violated. See, *e.g.*, *County of Sacramento* v. *Lewis*, 523 U. S. 833, 846–847 (1998) reiterating the due-process prohibition on "executive abuse of power . . . which shocks the conscience"); *id.*, at 858 (KENNEDY, J., concurring) (explaining that "objective considerations, including history and precedent, are the controlling principle" of this due process standard).

"This Court's recusal cases are illustrative. In each case the Court dealt with extreme facts that created an unconstitutional probability of bias that "'cannot be defined with precision.'" *Lavoie*, 475 U. S., at 822 (quoting *Murchison*, 349 U. S., at 136). Yet the Court articulated an objective standard to protect the parties' basic right to a fair trial ina fair tribunal." ..." *In re Murchison*, 349 U. S. 133. Finding that "no man can be a judge in his own case," and "no man is permitted to try cases where he has an interest in the outcome," *id.*, at 136, the Court noted that the circumstances of the case and the prior relationship required recusal. The judge's prior relationship with the defendant... was critical. In reiterating that the rule that "a defendant in criminal contempt proceedings should be [tried] before a judge other than the one reviled by the contemnor," *Mayberry* v. *Pennsylvania*, 400 U. S. 455, 466,

rests on the relationship between the judge and the defendant, *id.*, at 465, the Court noted that the objective inquiry is not whether the judge is actually biased, but whether the average judge in his position is likely to be neutral or there is an unconstitutional 'potential for bias,' " *id.*, at 466. Pp. 9–11.

"Because the objective standards implementing the Due Process Clause do not require proof of actual bias... the question is whether, "under a realistic appraisal of psychological tendencies and human weakness," the interest "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Withrow*, 421 U. S., at 47." ..." "Under our precedents there are objective standards that require recusal when "the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975)."

3.) **MISSOULA FOURTH DISTRICT COURT RULES state:** " E. Assumption of Cases Involving Families & Children by One Department: In order to better serve the needs of families and children as well as efficient administration of justice, the judges of the Fourth Judicial District direct that cases involving families/children and/or conservators/guardianships be consolidated so that one judge be in jurisdiction of all related civil & criminal proceedings.

1a. My motion for disqualification is in essence an "appeal" which Judge Deshamps has personal interest in as it involves every case he has seen argued by his long term coworkers, friends and employees- the county Attorneys Office including this case.

1.b. My Motion for disqualification is itself an Appeal regarding his abuses of discretion and prejudicial actions against me which are substantially interfering with me rights.

1.c. I had motioned regarding the campaign contributions from Fred Van Valkenberg, Bob Terrazas, Phillip O'Connell, Dr. Reed and others- after which he refused to recuse.

1.d. He independently mentioned and admitted twice in two different hearing discussing me and my case with

"many other" outside of th courtroom who were giving him negative information about me and the case.

1.e Judge Deschamps was the Missoula County Attorney for 26 years, during which time he worked side by side with, supervised and directed all actions of (now County Attorney) Fred Van Valkenberg (who has appeared alone for the State in this Cause) with S..Boylan (who is the charging Deputy in this cause) and with Kristen La Croix (who has appeared alone for the State in this Cause.)

1.f. Further in his State Employed Position as Missoula County Attorney and Special Prosecutor for over 14 Countys, Judge Deschamps was personally involved and directed Mr. Valkenberg, and Ms. La Croix in all of the actions by the State against Ryan Scott James Price including the actions in 2000, 2001, the repeated actions in 2002, 2004, 2005 and 2006- a case which the judge has personally and independently cited in this case (though in error-) stating on the record that "this case is identical to "Price" Judge Deschamps was the Prosecuting and top Attorney for the State on Price, his false assertion that this case has the same facts as Price (a case with repeated causes that he personally had un-arguable direct interests in every one (along with every member of the State's prosecution against me), is also cause for disqualification in itself as Price was not protecting the child from sexual abuse or domestic violence.

1.g. As County Attorney Judge Deschamps either directly represented Judge Larson and or directed his employees (Valkenburg,, La Croix and Boylan) in the defenses of Judge Larson (9a) against CFS, (b) against the Missoula Clerk of Courts claims and © in the case against Penelope Young where the State tried Ms. Young in what Justice Cotter explained was "Ex Post Facto Jurisprudence" as they are knowingly doing once again in this criminal/civil/CFS case. Thus, he has personal Interests in this case through protecting his own illegal actions in these previous cited similar cases.

1.h. Both Judge Larson and Judge Deshamps have willfully, knowingly and purposefully negated and ignored the Fourth Judicial Rule for one judge. Both judges did so while knowing that by doing so they did deprive me of a substantial Right to a fully informed Judge. This is cited in my concurrently filed Writ of Supervisory Control

Regarding Judge Deschamps. Both Judges did so in Order not only to protect each other from culpability but in Order to keep me literally bouncing between the courts with opposing Orders in each case, both denying me Due Process in the other case.

2.) Mont. Code Ann. § 3-1-805. Disqualification for cause: This section is limited in its application to judges presiding in district courts...1. Whenever a party to any proceeding in any court shall file an affidavit alleging facts showing personal bias or prejudice of the presiding judge, ***such judge shall proceed no further in the cause.***

2.a.(1) I filed my Motion and Affidavits in support (which clearly established a history of bias and prejudicial actions against me by Judge Deschamps) of Disqualification on January 22, 2010.

2.a.(2) The action was not based on rulings which could be addressed in appeal, but rather was based on a publicly recognized pattern and practice of bias & prejudice in ABA Rule 2:11

3.) ABA MODEL CODE OF JUDICIAL CONDUCT FEBRUARY 2007

I.) RULE 2.11: *Disqualification* (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances: (1) has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute ...(3) * has an economic interest* ... that could be substantially affected by the proceeding. (5) * has made a public statement...that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy. (6) The judge: (a) served as a lawyer or was associated with a lawyer who participated substantially as a lawyer in the matter (b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy...(d) previously presided as a judge over the matter in another court...Comment [1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably

with the term "disqualification." **[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.** [5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

3.1(1) See above **(3)** My foundational argument for Disqualification of Judge Deschamps could result in his mandatory disqualification from all criminal matters in Missoula County, (and in all of the other 14 counties where he served as Special Prosecutor) resulting in a substantial loss of income through employment as Missoula County may not employ a Judge who could not see criminal cases. **(5)** Judge Deschamps public comments to Chris Daly my stand by Public Defender led Chris, (as well as his publicly removing- and telling Chris he removed) my trial from the calendar indefinitely - led, Chris, the County Attorneys Office and I to believe (as we all believed as well) that he did not believe that there was any pre trial Hearing scheduled and that he could be disqualified from this Case , and that Disqualification was Justified. **(6.a.b.d)** See 1 &2 **(Comment)[2]** Judge Deschamps recognized his mandatory Disqualification and should have immediately recused even after he learned the Supreme Court had been informed of a hearing he knew without any doubt he had personally repeatedly denied my Motions for and had completely forgotten. [4] The fact that Judge Deschmaps worked side by side with S.Boylan, F. Van Valkenburg, Kristen La Croix as their direct Supervisor and friend, does with reasonable accuracy place his impartiality in question-. [5] Judge Deschamps never filed the information mandated even if he disagrees with my assertion in [5]

4.) Rule 2.3: Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice. (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do

so.. COMMENT: [1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. [2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased. [3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

4a. Judge Deshamps has engaged in and created a record of his own Pattern and Practice of openly hostile, demeaning, derogatory acts, harassing statements and actions , beliefs, publicly and professionally cited repeatedly ex parte communications with "many people" regarding me and this case- the conversations he repeatedly cited in COURT as the basis for his understanding of me, my personality, my beliefs, my crime and this case...as well as through his facial and bodily expressions, mannerisms, comments, denigrations, insults, open hostility towards me - while he sexually stereotypes me and my "mental health issues" in direct relation to my "crime" ..."hysterical, nuts, paranoid, crazy...threatens me with unprovoked undeserved and thus illegal intimidations, "bind and gag you, tie you up in another room with a locked door"...undeserved and illegal comments relating directly to my religious beliefs, "wont allow my competency evaluation to be given by a witch doctor" to what he has stated and expressed through for comic effect is wholly exaggerated body repeatedly is his total belief in my "disabilities" and has made fun of my socioeconomic status and inability to access necessary records through mocking me while recommending I file an essentially "doomed to fail" Writ of Supervisory Control all the while laughing at me with the whole table of the Prosecution as if my criminal prosecution, my religious beliefs, my 2 plus year separation from my children

are funny.

5.) **RULE 2.6: Ensuring the Right to Be Heard**

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.* COMMENT [1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

5.a.) Judge Deschamps has systematically disallowed me any right to comment to Respond, to file or to speak while citing everything outlined in # 4.

6.) RULE 2.7: Responsibility to Decide: A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.*

6.a.) Judge Deschamps knew that disqualification is mandatory through Rule 2:11 whether or not I filed a Motion, whether or not the Motion was denied because of the pretrial hearing he had forgotten and repeatedly denied my motions for over a 3 month period. Judge Deshamps did err when he on February 8, 2010 gave 3 Orders as by Mandate he was at the very least mandated to recusal (through Rules 2:11, 2:3, 2: 6, 2:9, 2:10, 2:8) The orders should be recognized as purposeful abuses of discretion and vacated.

6.b) AMERICAN STATES INSURANCE COMPANY, V CRAWLEY CONSTRUCTION INC., Marcus CRAWLEY, No. 96-16566, United States Court of Appeals, Ninth Circuit, Argued and Submitted, Decided January 26, 1998: which states: ""Without evidence of personal bias, prejudice or interest, adverse rulings by a judge are not sufficient to justify disqualification. Davis v. Fendler, 650 F.2d 1154, 1163 (9th Cir.1981); see also Liteky v. United States, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute valid basis for a bias or partiality motion.")."

6.c.) Moideen v. Gillespie, 55 F.3d 1478, 1482 (9th Cir.1995). "We review allegations of judicial bias for an abuse of discretion.

6.d) IN THE SUPREME COURT OF THE STATE OF MONTANA; 2009 MT 219N IN RE THE MARRIAGE OF E.D., and R.D.,; APPEAL FROM: District ; Fourth Judicial District: "We review the District Court's findings related to the parenting plan to determine if they are clearly erroneous. *See Jacobsen v. Thomas*, 2004 MT 273, ¶ 10, 323 Mont. 183, 100 P.3d 106. "

6.e.) *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975). " Under our precedents there are objective standards that require recusal when "the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable."

6.f.) Mont. Code Ann. 1-2-101 . Role of the judge preference to construction giving each provision meaning. In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.

6.g.) "Moreover, if the intention of the legislature can be determined from the plain meaning of the words used, we may not go further and apply other means of interpretation." **Curtis v. Dist. Court of 21st Jud. Dist. (1994), 266 Mont. 231, 235, 879 P.2d 1164, 1166 (citing State v. Hubbard (1982), 200 Mont. 106, 111, 649 P.2d 1331, 1333).** Where the statutory language is "plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe." **Curtis, 266 Mont. at 235, 879 P.2d at 1166.**

7.1) "The use of fabricated evidence against a criminal defendant "subjects [the defendant] to the deprivation of * * * rights * * * secured by the Constitution," 42 U.S.C. 1983. E.g., Briscoe v. LaHue, 460 U.S. 325, 326 n.1 (1983) ("knowing use of perjured testimony violates due process"); Pyle v. Kansas, 317 U.S. 213, 216 (1942) ("perjured testimony, knowingly used by the State authorities to obtain [a] conviction" works "a de privation of rights guaranteed by the Federal Constitution"). The United States can bring criminal charges against a prosecutor who knowingly presents such fabricated testimony, see 18 U.S.C. 242, or conspires with a witness or police officer to do so, see 18 U.S.C. 241."

7.2.) **In the Supreme court of Montana; 2009 MT; TOWN & COUNTRY FOODS, INC., v. CITY OF**

BOZEMAN, APPEAL Eighteenth District Court: "In examining a substantive due process claim, a court is concerned with the constitutionality of the underlying rule rather than with the fairness of the process by which the government applies the rule to an individual. Rotunda & Nowak, 2 *Treatise on Constitutional Law: Substance and Procedure* § 14.6 (2nd ed. 1992). This Court has set forth the analysis for evaluating a substantive due process claim...requires a test of reasonableness of a statute in relation to the State's power to enact such legislation. The essence of substantive due process is that the State cannot use its police power to take unreasonable, arbitrary or capricious action Against an individual. In order to satisfy substantive due process guarantees, a statute enacted under a state's police power must be reasonably related to a permissible legislative objective. *Raisler v. Burlington N. R. Co.*, 219 Mont. 254, 263, 717 P.2d 535, 541 (1985) (citations and internal quotations omitted) (followed in *State v. Webb*, 2005 MT 5, ¶ 22, 325 Mont. 317, 106 P.3d 521); *State v. Egdorf*, 2003 MT 264, ¶ 21, 317 Mont. 436, 77 P.3d 517). Substantive due process primarily examines underlying substantive rights and remedies to determine whether restrictions are unreasonable or arbitrary when balanced against the purpose of a government body in enacting a statute, ordinance or regulation. *Webb*, ¶ 21; *Egdorf*, ¶ 19. In other words, the test ...concerns an examination of whether the government, by enacting a piece of legislation, acted in an unreasonable, arbitrary, or capricious fashion."

7.3.) **IN THE SUPREME COURT OF THE STATE OF MONTANA; 2007 MT: STEVE SELTZER V. STEVE MORTON, GIBSON, DUNN & CRUTCHER, LLP, and DENNIS A. GLADWELL, APPEAL FROM: The Eighth Judicial District:** "[T]he Due Process Clause prohibits a State from punishing an individual without first providing that individual with an opportunity to present every available defense." 71 *Philip Morris USA v. Williams*, No. 05- 1256, slip op. at 5 (U.S. Feb. 20, 2007) (citation and internal quotation marks omitted)" ... and... "¶156 We note that the United States Supreme Court's due process jurisprudence in this area speaks of both the "imposition" of punitive damages and the "deprivation" of property. *See Campbell*, 538 U.S. at 416-17, 123 S.Ct. at 1519-20 (the Due Process Clause "prohibits the *imposition* of grossly excessive or arbitrary

punishments on a tortfeasor"; "This constitutional concern, itself harkening back to the Magna Carta, arises out of the basic unfairness of *depriving* citizens of life, liberty, or property, through the application, not of law and legal processes, but of arbitrary coercion.")

7.4.) **Griffin v. Breckenridge, 403 U.S. 88, 102 (1971).** "To establish that the purpose of the conspiracy is to "deprive a person or class of persons of equal protection of the laws," the plaintiff must allege "some racial, or perhaps otherwise class- based invidiously discriminatory animus behind the conspirators' action."

7.a.) While knowing and ignoring his own mandated recusal- Judge Deschamps- made 3 new Orders on February 8 outlining his own prejudicial abuse of discretionary rulings by implementing a total ban on showing the jury any of the direct evidence which I had provided to him (in my Motion for dismissal) proving that Ann did knowingly lie to the Court, to every law enforcement official and to CFS in Order to interfere and stop the sexual abuse investigation, have me arrested, and did create overt discrimination against me as a victim of abuse. These Orders created in themselves a further deprivation of my constitutional rights to due Process and to Protection by the state by protecting Ann's and Nicole Roths' perjured testimonies proving that my arrest, the Amber Alert and the criminal prosecution are all based firmly their fraudulent & perjured testimonies.

7.b) The States criminal charges against me are a known substantive due process claim in that the enactment of this statute against me is unreasonable in relation to the State's power to enact such legislation against victims of domestic violence (in this case) rather than the states historical unwillingness (in the civil and CFS causes by both) to enact any sort of control much less even recognize the Respondent's, his girlfriend's and GAL's abuses and or historical illegal parental & custodial interference. The essence of my substantive due process claim is that the State has intentionally knowingly misapplied and misused its police power in order to take unreasonable, arbitrary discriminatory and capricious actions which deprive of my constitutionally protected Rights (to due process, to safety, to familial relations to equal protection under the law, to protection by the state, to not be forced to testify against myself)... Against me while ignoring its own mandates (reasonably related to it's permissible and yes

mandatory legislative objectives of protecting the victims- here, me and the children- from harm.

8.) RULE 2.8: Decorum, Demeanor, and Communication... (B) A judge shall be patient, dignified, and courteous to litigants... 8.a) See all of the above.

9.) RULE 2.9: Ex Parte Communications: (A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

10.) RULE 2.10: Judicial Statements on Pending and Impending Cases: (A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

CM 2.19.10

CERTIFICATE OF SERVICE

I Certify that I did on the 19 day 2010 I did then hand deliver a copy of the foregoing to:

1. Shirley Brown CFS; Park Avenue Building, 301 S Park Helena
2. S. Boylan, Missoula County Attorneys Office
3. the Honorable Judge Deschamps Fourth Judicial Court Missoula
4. the Honorable Judge Larson Fourth Judicial Court Missoula
5. Ann O'Connell GAL, c/o Clerk of Court Missoula
6. Andre Gurr, Bob Terrazas Counsel for OE
7. an original and nine copies to The Clerk of the Montana Supreme Court

CM CM 2.19.10

Exhibit A.

No. 96-532

IN THE SUPREME COURT OF THE STATE OF MONTANA

1997

STATE OF MONTANA,

Plaintiff and Respondent,

vs.

JAMES ALBERT COONEY,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,

In and for the County of Missoula,

The Honorable John W. Larson, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Terry G. Sehestedt, Missoula, Montana

For Respondent:

Robert L. "Dusty" Deschamps III, Missoula County Attorney, Fred Van Valkenburg, Deputy Missoula County Attorney, Missoula, Montana; Joseph P. Mazurek, Attorney General, John Paulson, Assistant Attorney General, Helena, Montana

Nos. 96-466 and 96-467

IN THE SUPREME COURT OF THE STATE OF MONTANA

1997

STATE OF MONTANA,

Plaintiff and Respondent,

v.

MICHAEL ADAIR ELLENBURG,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District, In and for the County of Missoula, the Honorable John W. Larson, Judge Presiding.

COUNSEL OF RECORD:

For Appellant:

Terry G. Sehestedt, Missoula, Montana

For Respondent:

Honorable Joseph P. Mazurek, Attorney General; Jennifer Anders, Assistant Attorney General, Helena, Montana

Robert L. Deschamps III, County Attorney; Fred Van Valkenburg, Deputy County Attorney, Missoula, Montana

No. 98-334

IN THE SUPREME COURT OF THE STATE OF MONTANA

1998 MT 220N

STATE OF MONTANA,

Plaintiff and Respondent,

v.

RICHARD LEE MUSCHIK,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,

In and for the County of Missoula,

The Honorable John S. Henson, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Richard Lee Muschik, Pro Se , Pekin, Illinois

For Respondent:

Hon. Joseph P. Mazurek, Attorney General;

Patricia J. Jordan, Ass't Attorney General, Helena, Montana

Robert L. "Dusty" Deschamps, III, Missoula County Atorney;

Fred Van Valkenburg, Deputy County Attorney, Missoula, Montana

Submitted on Briefs: August 27, 1998

No. 03-509

IN THE SUPREME COURT OF THE STATE OF MONTANA

2005 MT 219

STATE OF MONTANA,

Plaintiff and Respondent,

v.

CHERYL IRISH CLIFFORD,

Defendant and Appellant.

APPEAL FROM: The District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. CDC 2001-104,
Honorable Thomas C. Honzel, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Palmer A. Hoovestal, Hoovestal, Kakuk & Fanning, PLLC,
Helena, Montana

For Respondent:

Honorable Mike McGrath, Attorney General; Mark W. Mattioli,
Assistant Attorney General, Helena

Robert Deschamps III and Kirsten LaCroix, Special Lewis and Clark
Deputy County Attorneys, Missoula, Montana

Submitted on Briefs: January 11, 2005

Decided: September 6, 2005

Filed:

Clerk

No. 97-280

IN THE SUPREME COURT OF THE STATE OF MONTANA

1998 MT 86N

STATE OF MONTANA,

Plaintiff and Respondent,

v.

CLARK MARTIN SMITH,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and for the County of Missoula,
The Honorable John W. Larson, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Terry Wallace, Attorney at Law, Missoula, Montana

For Respondent:

Hon. Joseph P. Mazurek, Attorney General; C. Mark Fowler,
Assistant Attorney General, Helena, Montana

Robert L. Deschamps, III, Missoula County Attorney,
Betty Wing, Deputy County Attorney, Missoula, Montana

No. 98-135

IN THE SUPREME COURT OF THE STATE OF MONTANA

1998 MT 237N

STATE OF MONTANA,

Plaintiff and Respondent,

v.

BRUCE ALFRED RUDD,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,

In and for the County of Missoula,

Honorable Douglas G. Harkin, Judge Presiding.

COUNSEL OF RECORD:

For Appellant:

Mark McLaverty, Public Defender's Office, Missoula, Montana

For Respondents:

Honorable Joseph P. Mazurek, Attorney General; Jennifer Anders,

Assistant Attorney General, Helena, Montana

Robert L. Deschamps, County Attorney; Robert L. Zimmerman,

Deputy County Attorney, Missoula, Montana